



**4310-05-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 938**

**SATS No. PA-171-FOR; Docket ID: OSM-2019-0009; S1D1S SS08011000**

**SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520**

**Pennsylvania Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (hereinafter, the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed amendment would make changes to Pennsylvania's Coal Refuse Disposal Control Act. Those changes would include establishing the terms and conditions under which a system that prevents precipitation from contacting coal refuse must be installed, requiring that the regulations regarding temporary cessation at coal refuse disposal areas conform with Federal SMCRA regulations, and providing for future regulations addressing the connection with source mines that are in temporary cessation in determining temporary cessation for the coal refuse disposal permit.

This document provides the times and locations that the Pennsylvania program and this proposed amendment to that program are available for your inspection, the

comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If requested, we may hold a public hearing or meeting on the amendment on [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by SATS No. PA-171-FOR, by any of the following methods:

- *Mail/Hand Delivery:* Ben Owens, Field Office Director, Pittsburgh Field Office, 3 Parkway Center South, 2<sup>nd</sup> Floor, Pittsburgh, PA, 15220
- *Fax:* (412) 937-2177
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM-2019-0009. If you would like to submit comments go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings or meetings, and all written

comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Office or the full text of the program amendment is available for you to read at [www.regulations.gov](http://www.regulations.gov).

Ben Owens, Pittsburgh Field Office Director

Office of Surface Mining Reclamation and Enforcement

3 Parkway Center Drive South, 2<sup>nd</sup> Floor, Pittsburgh, PA 15220

Telephone: (412) 937-2827

E-mail: *bowens@osmre.gov*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Pennsylvania Department of Environmental Protection

Bureau of Mining Programs

Rachel Carson State Office Building

P.O. Box 8461

Harrisburg, PA 17105-8461

**FOR FURTHER INFORMATION CONTACT:** Ben Owens, Pittsburgh Field Office

Director Telephone: (412) 937-2827. E-mail: *bowens@gmail.com* .

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures

#### IV. Statutory and Executive Order Reviews

##### I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

##### II. Description of the Proposed Amendment

By letter dated October 16, 2019, (Administrative Record No. PA 905.00), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*).

The proposed amendment would make changes to section 6.1 of Pennsylvania's Coal Refuse Disposal Control Act (52 P.S. §30.56a). Subsection (i) of that section requires that for all new coal refuse disposal areas, operators must include a system to prevent adverse impacts to surface and ground water, to prevent precipitation from contacting coal refuse, and to allow for revegetation and prevention of erosion.

Subsection (i) also requires that operators must install this system when the operator temporarily ceases operation of the coal refuse disposal area for 90 days or more, unless the Department approves a longer period of one year or less because of a labor strike or business necessity. The proposed amendment would remove the specific requirements for a labor strike or business necessity, and allow the Department to approve a period of temporary cessation for coal refuse disposal areas of more than 90 days without installation of the protective system at the operator's request. The proposed amendment would also remove the one year limit on temporary cessations without installing the protective system.

The proposed amendment would also add subsection (j) to section 6.1 of the Pennsylvania Coal Refuse Disposal Control Act. Subsection (j) would allow the Department to promulgate new regulations that connect the time limits on temporary cessation of a coal refuse disposal area without installation of a protective system to cessations occurring at the underground mine or coal preparation plant that produces the source coal refuse or related material. Subsection (j) also requires any such regulations, and any related policies, rules, and standards, to conform to SMCRA and its implementing regulations.

Pennsylvania proposed this amendment to address situations where the underground mines or coal preparation plants that produce coal refuse cease operations for longer than a year. In such situations, the sources of the coal refuse has no time limit on the cessation of operations, but the coal refuse disposal area has a time limit of one year or less. This has created operational problems for the coal refuse disposal sites.

The full text of the program amendment is available for you to read at the

locations listed above under **ADDRESSES** or at [www.regulations.gov](http://www.regulations.gov).

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

#### *Electronic or Written Comments*

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

#### *Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment- including your personal identifying information- may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

#### **IV. Statutory and Executive Order Reviews**

##### *Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

##### *Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

**Dated:** November 13, 2019.

Thomas D. Shope, Regional Director  
North Atlantic - Appalachian Region

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